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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/981,519
Filing Date	October 17, 2001
First Named Inventor	Abbondanzio et al.
Art Unit	2127
Examiner Name	Kenneth Tang
Attorney Docket Number	RPS920010145US1

Total Number of Pages in This Submission

ENCLOSURES *(Check all that apply)*

- [x] Fee Transmittal Form
- [ ] Previously Paid Fee Apply
- [ ] Fee Attached
- [ ] Amendment/Reply
- [ ] After Final
- [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Response to Missing Parts/ Incomplete Application
- [ ] Response to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
- [ ] After Allowance communication to Technology Center (TC)
- [ ] Appeal Communication to Board of Appeals and Interferences
- [x] Appeal Communication to TC **(Appeal Notice, Brief, Reply Brief)**
- [ ] Second Appeal Brief Proprietary Information
- [ ] Status Letter
- [x] Other Enclosure(s) (please Identify below):

1) Postcard

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Winstead Sechrest & Minick P.C. Robert A. Voigt, Jr.; Reg. No. 47,159
Signature	
Date	March 21, 2006

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Typed or printed name	Beatrice Zepeda		
Signature	Beatrice Zepeda	Date	March 21, 2006

PTO/SB/17 (11-04)
Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Effective on 10/01/2004. Patent fees are subject to annual revision.

FEE TRANSMITTAL
For FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) **0.00**

Complete if Known	
Application Number	09/981,519
Filing Date	October 17, 2001
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METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order

☑ Deposit Account ☐ None

Deposit Account Number: 50-0563

Deposit Account Name: IBM Corporation

The Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below

☐ Charge fee(s) indicated below, **except for the filing fee**

☑ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17

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FEE CALCULATION

1. BASIC FILING FEE

Fee Description	Fee ($)	Small Entity Fee ($)	Fee Paid($)
Utility Filing Fee	790	395	
Design Filing Fee	350	175	
Plant Filing Fee	550	275	
Reissue Filing Fee	790	395	
Provisional Filing Fee	160	80	

Subtotal (1) $ _____

FEE CALCULATION (continued)

2. EXTRA CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20	50	25
Each independent claim over 3	200	100
Multiple dependent claims	360	180
For Reissues, each claim over 20 and more than in the original patent	50	25
For Reissues, each independent claim more than in the original patent	200	100

Total Claims	Extra Claims	Fee ($)	Fee Paid ($)
_____ - 20 or HP =	_____	x _____	= _____

HP = highest number of total claims paid for, if greater than 20

Indep. Claims	Extra Claims	Fee ($)	Fee Paid ($)
_____ - 3 or HP =	_____	x _____	= _____

HP = highest number of independent claims paid for, if greater than 3

Multiple Dependent Claims	Fee ($)	Fee Paid ($)
	_____	_____

Subtotal (2) $ _____

3. OTHER FEES

Fee Description	Fee ($)	Small Entity Fee ($)	Fee Paid($)
1-month extension of time	120	60	
2-month extension of time	450	225	
3-month extension of time	1,020	510	
4-month extension of time	1,590	795	
5-month extension of time	2,160	1,080	
Information disclosure stmt. fee	180	180	
37 CFR 1.17(q) processing fee	50	50	
Non-English specification	130	130	
Notice of Appeal	500	250	
Filing a brief in support of appeal	500	250	$0.00
Request for oral hearing	1,000	500	
Other: *Previous Fee Paid For Apply			

Subtotal (3) $ _____

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 47.159	Telephone 512.370.2832
Name (Print/Type)	Robert A. Voigt, Jr.		Date March 21, 2006

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Abbondanzio et al.	:	Before the Examiner: Tang, Kenneth
Serial No.: 09/981,519	:	Group Art Unit: 2127
Filed: October 17, 2001	:	
Title: AUTOMATICALLY SWITCHING SHARED REMOTE DEVICES IN A DENSE SERVER ENVIRONMENT THEREBY ALLOWING THE REMOTE DEVICES TO FUNCTION AS A LOCAL DEVICE	:	IBM Corporation Intellectual Property Law 3039 Cornwallis Road Research Triangle Park, NC 27709

SECOND APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I. REAL PARTY IN INTEREST

The real party in interest is International Business Machines, Inc., which is the assignee of the entire right, title and interest in the above-identified patent application.

CERTIFICATION UNDER 37 C.F.R. §1.8

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Beatrice Zepeda
Signature

Beatrice Zepeda
(Printed name of person certifying)

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, Appellants' legal representative or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-22 are pending in the Application. Claims 1-22 stand rejected. Claims 1-22 are appealed.

IV. STATUS OF AMENDMENTS

Appellants have not submitted any amendments following receipt of the final rejection with a mailing date of June 16, 2005.

V. SUMMARY OF CLAIMED SUBJECT MATTER

In one embodiment of the present invention, a method for automatically switching remote shared devices in a dense server environment may comprise the step of receiving a request to access a shared device from a server blade. Specification, page 10, line 3 – page 11, line 5; Figure 3, step 301. The method may further comprise issuing a query as to whether the shared device is being accessed. Specification, page 11, lines 6-8; Figure 3, step 302. The method may further comprise receiving a response to the query indicating that the shared device is not available if the shared device is not being accessed by the server blade. Specification, page 12, lines 3-8; Figure 3, step 307. The method may further comprise waiting to receive a response that the shared device is available if the shared device is not being accessed by the server blade. Specification, page 12, lines 8-18; Figure 3, step 308.

In another embodiment of the present invention, a computer program product embodied in a machine readable medium for automatically switching remote shared devices in a dense server environment may comprise the programming step of

receiving a request to access a shared device from a server blade. Specification, page 8, line 4 – page 9, line 26; Specification, page 10, line 3 – page 11, line 5; Figure 1, element 110; Figure 2, elements 204, 206; Figure 3, step 301. The computer program product may further comprise the programming step of issuing a query as to whether the shared device is being accessed. Specification, page 8, line 4 – page 9, line 26; Specification, page 11, lines 6-8; Figure 1, element 110; Figure 2, elements 204, 206; Figure 3, step 302. The computer program product may further comprise the programming step of receiving a response to the query indicating that the shared device is not available if the shared device is not being accessed by the server blade. Specification, page 8, line 4 – page 9, line 26; Specification, page 12, lines 3-8; Figure 1, element 110; Figure 2, elements 204, 206; Figure 3, step 307. The computer program product may further comprise the programming step of waiting to receive a response that the shared device is available if the shared device is not being accessed by the server blade. Specification, page 8, line 4 – page 9, line 26; Specification, page 12, lines 8-18; Figure 1, element 110; Figure 2, elements 204, 206; Figure 3, step 308.

In another embodiment of the present invention, a system comprising one or more shared devices. Specification, page 7, line 3 – page 8, line 2; Figure 1, element 130. The system may further comprise a plurality of server blades coupled to the one or more shared devices via a service unit, where the service unit is configured to establish a connection between one of the one or more shared devices and one of the plurality of server blades requesting to access the one of the one or more shared devices. Specification, page 7, line 3 – page 8, line 2; Figure 1, elements 110, 120, 130. The requesting server blade may further comprise a processor. Specification, page 8, line 4 – page 9, line 26; Figure 2, element 201. The requesting server blade may further comprise a memory unit coupled to the processor, where the memory unit is operable for storing a program, where the program is operable for performing the programming step of receiving a request to access the requested shared device from the requesting server blade. Specification, page 8, line 4 – page 9, line 26;

Specification, page 10, line 3 – page 11, line 5; Figure 1, element 110; Figure 2, elements 201, 204, 206; Figure 3, step 301. The program may further be operable for performing the programming step of issuing a query as to whether the shared device is being accessed. Specification, page 8, line 4 – page 9, line 26; Specification, page 11, lines 6-8; Figure 1, element 110; Figure 2, elements 204, 206; Figure 3, step 302. The program may further be operable for performing the programming step of receiving a response to the query indicating that the shared device is not available if the shared device is not being accessed by the server blade. Specification, page 8, line 4 – page 9, line 26; Specification, page 12, lines 3-8; Figure 1, element 110; Figure 2, elements 204, 206; Figure 3, step 307. The program may further be operable for performing the programming step of waiting to receive a response that the shared device is available if the shared device is not being accessed by the server blade. Specification, page 8, line 4 – page 9, line 26; Specification, page 12, lines 8-18; Figure 1, element 110; Figure 2, elements 204, 206; Figure 3, step 308.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-22 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellants regard as the invention. Claims 1-6, 8-13 and 15-21 stand rejected under 35 U.S.C. §102(e) as being anticipated by Dugan et al. (U.S. Patent No. 6,363,411) (hereinafter "Dugan"). Claims 7, 14 and 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Dugan in view of Chang et al. (U.S. Publication No. 2002/0122415) (hereinafter "Chang").

VII. ARGUMENT

A. Claims 1-22 are improperly rejected under 35 U.S.C. §112, second paragraph.

The Examiner has rejected claims 1-22 under 35 U.S.C. §112, second paragraph, for allegedly being indefinite for failing to particularly point out and

distinctly claims the subject matter which Appellants regard as the invention. Paper No. 5, page 2. In particular, the Examiner states that the term "switching" in the preamble of claims 1 and 8 is indefinite "because there is no relationship made with anything else in the claim". Paper No. 5, page 2. Appellants respectfully traverse the assertion that Appellants failed to particularly point out and distinctly claim the subject matter which Appellants regard as the invention.

Appellants respectfully traverse the assertion that since the term "switching", as recited in the preamble of claims 1 and 8, is not referred to in the body of claims 1 and 8 that claims 1 and 8 are indefinite. This is not an appropriate reason for rejecting claims as being indefinite under 35 U.S.C. §112, second paragraph. A rejection under 35 U.S.C. §112, second paragraph, is not appropriate, when the scope of the claimed subject matter can be determined by one having ordinary skill in the art. M.P.E.P. §706.03(d). Claims 1-14 clearly set forth the metes and bounds of the patent protection desired in relation to automatically switching remote shared devices to particular server blades in a dense server environment as discussed on pages 7-13 of the Specification. The Examiner has not provided any evidence that a person of ordinary skill in the art would not be able to determine the scope of the claimed subject matter in claims 1 and 8. One having ordinary skill in the art can determine the scope of the claimed subject matter in claims 1-14. Consequently, Appellants respectfully assert that claims 1-14 are allowable under 35 U.S.C. §112, second paragraph, and respectfully request the Examiner to withdraw the rejections of claims 1-14 under 35 U.S.C. §112, second paragraph.

In response to the above argument, the Examiner asserts that claims 1 and 8 are rejected under 35 U.S.C. §112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. Paper No. 5, page 7. Appellants respectfully traverse. Appellants respectfully assert that claims 1 and 8 do not omit matter disclosed to be essential to the invention as described in the

Specification. Accordingly, claims 1-14 are allowable under 35 U.S.C. §112, second paragraph.

Furthermore, the Examiner has not specifically pointed out the essential elements deemed to have been omitted from claims 1 and 8. The Examiner must specify the matter disclosed to be essential to the invention in the Specification that was not claimed in claims 1 and 8. *See In re Mayhew*, 527 F.2d 1229, 188 U.S.P.Q. 356 (C.C.P.A. 1976); M.P.E.P. §2172.01. Again, Appellants respectfully assert that claims 1 and 8 do not omit matter disclosed to be essential to the invention as described in the Specification. Accordingly, claims 1-14 are allowable under 35 U.S.C. §112, second paragraph

Furthermore, a rejection for omitting essential structural cooperative relationships of elements is not appropriate under 35 U.S.C. §112, second paragraph. M.P.E.P. §2172.01. Instead, such a rejection is appropriate under 35 U.S.C. §112, first paragraph. M.P.E.P. §2172.01. Accordingly, claims 1-14 are allowable under 35 U.S.C. §112, second paragraph.

Furthermore, the Examiner rejects claim 15 under 35 U.S.C. §112, second paragraph, because "it is not made explicitly clear in the claim language whether this is a system or a method claim." Paper No. 5, page 2. Appellants respectfully traverse. The preamble of claim 15 recites "a system." Claim 15 further includes structural elements such as shared devices, server blades, a processor, a memory unit, etc. It is quite clear that claim 15 is a system claim and not a method claim. Further, the fact that some of the limitations are steps performed by a program does not render the claim a method claim. Neither the fact that some of the limitations are steps performed by a program does not render the claim indefinite. As stated above, a rejection under 35 U.S.C. §112, second paragraph, is not appropriate, when the scope of the claimed subject matter can be determined by one having ordinary skill in the art. M.P.E.P. §706.03(d). Claims 15-22 clearly set forth the metes and bounds of the

patent protection desired in relation to automatically switching remote shared devices to particular server blades in a dense server environment as discussed on pages 7-13 of the Specification. The Examiner has not provided any evidence that a person of ordinary skill in the art would not be able to determine the scope of the claimed subject matter in claim 15. One having ordinary skill in the art can determine the scope of the claimed subject matter in claims 15-22. Consequently, Appellants respectfully assert that claims 15-22 are allowable under 35 U.S.C. §112, second paragraph, and respectfully request the Examiner to withdraw the rejections of claims 15-22 under 35 U.S.C. §112, second paragraph.

B. Claims 1-6, 8-13 and 15-21 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Dugan.

The Examiner has rejected claims 1-6, 8-13 and 15-21 under 35 U.S.C. §102(e) as being anticipated by Dugan.[1] Office Action (01/09/2006), page 3. Appellants respectfully traverse these rejections for at least the reasons stated below.

1. Claims 1, 8 and 15 are not anticipated by Dugan.

Appellants respectfully assert that Dugan does not disclose "receiving a request to access a shared device from a server blade" as recited in claim 1 and similarly in claims 8 and 15. The Examiner cites column 66, lines 15-34 and 39-66 of Dugan as disclosing the above-cited claim limitation. Office Action (01/09/2006), page 3. Appellants respectfully traverse and assert that Dugan instead discloses that the Next Generation Intelligent Network (NGIN) provides the feature and functionality of accepting inbound calls, i.e., the capability to receive an indication of an inbound call and determine if the required resources and application to service the call are available. Column 66, lines 16-21. Dugan further discloses that the NGIN further provides the feature and functionality of incoming call screening with a list,

[1] Since claim 14 has a similar claim limitation as claims 7 and 22, Appellants believe that the Examiner meant to reject claims 1-6, 8-13 and 15-21 under 35 U.S.C. §102(e) as being anticipated by Dugan and mean to reject claims 7, 14 and 22 under 35 U.S.C. §103(a) as being unpatentable over

i.e., allowing the subscriber to define a screening list to refuse or accept incoming calls. Column 66, lines 25-28. Dugan further discloses that the NGIN further provides the feature and functionality of queuing for incoming calls for any type of resource, i.e., when a resource (a termination, an operator, or an expensive hardware resource) is not available, the call which is requesting the connection to the resource is put into a queue. Column 66, lines 39-43. Dugan further discloses that the NGIN further provides the feature and functionality of call queuing, i.e., queuing and distributing callas to operator positions, pending availability of a resource. Column 66, lines 64-66. There is no language in the cited passage that discloses receiving a request to access a shared device. Neither is there any language in the cited passage that discloses receiving a request to access a shared device from a server blade. Thus, Dugan does not disclose all of the limitations of claims 1, 8 and 15, and thus claims 1, 8 and 15 are not anticipated by Dugan. M.P.E.P. §2131.

Appellants further assert that Dugan does not disclose "issuing a query as to whether said shared device is being accessed" as recited in claim 1 and similarly in claims 8 and 15. The Examiner cites column 66, lines 39-66 of Dugan as disclosing the above-cited claim limitation. Office Action (01/09/2006), page 3. Appellants respectfully traverse. As stated above, Dugan instead discloses that the NGIN provides the feature and functionality of queuing for incoming calls for any type of resource, i.e., when a resource (a termination, an operator, or an expensive hardware resource) is not available, the call which is requesting the connection to the resource is put into a queue. Column 66, lines 39-43. Dugan further discloses that the NGIN further provides the feature and functionality of call queuing, i.e., queuing and distributing callas to operator positions, pending availability of a resource. Column 66, lines 64-66. There is no language in the cited passage that discloses issuing a query. Neither is there any language in the cited passage that discloses issuing a query as to whether a shared device is being accessed. Thus, Dugan does not disclose

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Dugan in view of Chang.

all of the limitations of claims 1, 8 and 15, and thus claims 1, 8 and 15 are not anticipated by Dugan. M.P.E.P. §2131.

Appellants further assert that Dugan does not disclose "wherein if said shared device is not being accessed by said server blade then the method further comprises the steps of: receiving a response to said query indicating that said shared device is not available" as recited in claim 1 and similarly in claims 8 and 15. The Examiner cites column 66, lines 23-25 and 39-42 of Dugan as disclosing the above-cited claim limitation. Office Action (01/09/2006), page 3. Appellants respectfully traverse and assert that Dugan instead discloses that if the required resources or the application is not available, a reject indication is sent back to the switch. Column 66, lines 23-25. Dugan further discloses that the NGIN provides the feature and functionality of queuing for incoming calls for any type of resource, i.e., when a resource (a termination, an operator, or an expensive hardware resource) is not available, the call which is requesting the connection to the resource is put into a queue. Column 66, lines 39-43. There is no language in the cited passages that discloses receiving a response to the query (referring to the query as to whether the shared device is being accessed) indicating that a shared device is not available. Neither is there any language in the cited passages that discloses receiving a response to the query indicating that a shared device is not available if the shared device is not being accessed by the server blade. Thus, Dugan does not disclose all of the limitations of claims 1, 8 and 15, and thus claims 1, 8 and 15 are not anticipated by Dugan. M.P.E.P. §2131.

Appellants further assert that Dugan does not disclose "wherein if said shared device is not being accessed by said server blade then the method further comprises the steps of: waiting to receive a response that said shared device is available" as recited in claim 1 and similarly in claims 8 and 15. The Examiner cites column 66, lines 18-25 and 48-50 of Dugan as disclosing the above-cited claim limitation. Office Action (01/09/2006), page 4. Appellants respectfully traverse and assert that Dugan

instead discloses that the Next Generation Intelligent Network (NGIN) provides the feature and functionality of accepting inbound calls, i.e., the capability to receive an indication of an inbound call and determine if the required resources and application to service the call are available. Column 66, lines 16-21. Dugan further discloses that the NGIN provides the feature and functionality of queuing for incoming calls for any type of resource, i.e., when a resource (a termination, an operator, or an expensive hardware resource) is not available, the call which is requesting the connection to the resource is put into a queue. Column 66, lines 39-43. There is no language in the cited passages that discloses waiting to receive a response that the shared device is available. Neither is there any language in the cited passages that discloses waiting to receive a response that the shared device is available if the shared device is not being accessed by the server blade. Thus, Dugan does not disclose all of the limitations of claims 1, 8 and 15, and thus claims 1, 8 and 15 are not anticipated by Dugan. M.P.E.P. §2131.

Appellants further assert that Dugan does not disclose "one or more shared devices; and a plurality of server blades coupled to said one or more shared devices via a service unit, wherein said service unit is configured to establish a connection between one of said one or more shared devices and one of said plurality of server blades requesting to access said one of said one or more shared devices" as recited in claim 15. The Examiner cites elements 220, 54 and 22 of Dugan as disclosing a shared device. Office Action (01/09/2005), page 5. The Examiner further cites element 210 of Dugan as disclosing a server blade. Office Action (01/09/2005), page 5. The Examiner further cites element 204 as disclosing a service unit. Office Action (01/09/2005), page 5. Appellants respectfully traverse. The Examiner must provide a basis in fact and/or technical reasoning to support the assertion that elements 220, 54 and 22 of Dugan disclose a shared device; that element 210 of Dugan discloses a server blade; and that element 204 of Dugan discloses a service unit. *See Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that must make clear that

elements 220, 54 and 22 of Dugan disclose a shared device; that element 210 of Dugan discloses a server blade; and that element 204 of Dugan discloses a service unit, and that it be so recognized for persons of ordinary skill. *See In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claim 15. M.P.E.P. §2131.

2. Claims 2-6 are not anticipated by Dugan for at least the reasons that claim 1 is not anticipated by Dugan.

Claims 2-6 depend from claim 1 and hence are not anticipated by Dugan for at least the reasons that claim 1 is not anticipated by Dugan, as discussed above in Section B.1.

3. Claims 9-13 are not anticipated by Dugan for at least the reasons that claim 8 is not anticipated by Dugan.

Claims 9-13 depend from claim 8 and hence are not anticipated by Dugan for at least the reasons that claim 8 is not anticipated by Dugan, as discussed above in Section B.1.

4. Claims 16-21 are not anticipated by Dugan for at least the reasons that claim 15 is not anticipated by Dugan.

Claims 16-21 depend from claim 15 and hence are not anticipated by Dugan for at least the reasons that claim 15 is not anticipated by Dugan, as discussed above in Section B.1.

5. Claims 2, 9 and 16 are not anticipated by Dugan.

Appellants respectfully assert that Dugan does not disclose "determining if said shared device is being accessed" as recited in claim 2 and similarly in claims 9 and 16. The Examiner cites elements 158, 88, 208 and 172 of Figure 3 of Dugan as disclosing the above-cited claim limitation. Office Action (01/09/2005), page 4. Appellants respectfully traverse and assert that Dugan instead discloses that element

158 of Figure 3 corresponds to a switch fabric. See Figure 3. Dugan further discloses that intelligent peripherals ("IP") (element 88) provide the ability to process and act on information contained within the actual call transmission path. Column 12, lines 18-20. Dugan further discloses that IPs (element 88) are generally in a separate Resource Complex, such as RCB (element 208), and are controlled by the ICPs (element 172) in a similar manner as RCA 206. Column 12, lines 20-22. There is no language in the cited passage that discusses elements 158, 88, 208 and 172 as disclosing determining if a shared device is being accessed. Thus, Dugan does not disclose all of the limitations of claims 2, 9 and 16, and thus claims 2, 9 and 16 are not anticipated by Dugan. M.P.E.P. §2131.

6. Claims 3, 10 and 17 are not anticipated by Dugan.

Appellants respectfully assert that Dugan does not disclose "wherein if said shared device is not being accessed then the method further comprises the steps of: connecting said shared device with said server blade" as recited in claim 3 and similarly in claims 10 and 17. The Examiner cites column 67, lines 5-10 and 59-61 and column 68, lines 29-67 of Dugan as disclosing the above-cited claim limitation. Office Action (01/09/2005), page 4. Appellants respectfully traverse and assert that Dugan instead discloses that the system is able to concatenate the calling party ID with some other arbitrary characters for extra information or indication. Column 67, lines 4-6. Dugan further discloses that the NGIN provides the feature and functionality to analyze the incoming call parameters to determine the type of service processing required by the call. Column 67, lines 6-9. Dugan further discloses that the NGIN's call destination routing feature is a feature enabling the network to determine the destination to which a call should be terminated. Column 67, lines 59-61. Dugan further discloses that NGIN provides the feature and functionality of requesting routing instructions, i.e., when a call extension is done from the platform, a lookup is performed to determine the appropriate routing instructions. Column 68, lines 33-36. There is no language in the cited passages that discloses connecting a

shared device with a server blade. Neither is there any language in the cited passages that discloses connecting a shared device with a server blade if the shared device is not being accessed. Thus, Dugan does not disclose all of the limitations of claims 3, 10 and 17, and thus claims 3, 10 and 17 are not anticipated by Dugan. M.P.E.P. §2131.

Appellants further assert that Dugan does not disclose "transferring said request to access said shared device to said shared device" as recited in claim 3 and similarly in claims 10 and 17. The Examiner cites column 67, lines 5-10 and 59-61 and column 68, lines 29-67 of Dugan as disclosing the above-cited claim limitation. Office Action (01/09/2005), page 4. Appellants respectfully traverse. As stated above, Dugan instead discloses that the system is able to concatenate the calling party ID with some other arbitrary characters for extra information or indication. Column 67, lines 4-6. Dugan further discloses that the NGIN provides the feature and functionality to analyze the incoming call parameters to determine the type of service processing required by the call. Column 67, lines 6-9. Dugan further discloses that the NGIN's call destination routing feature is a feature enabling the network to determine the destination to which a call should be terminated. Column 67, lines 59-61. Dugan further discloses that NGIN provides the feature and functionality of requesting routing instructions, i.e., when a call extension is done from the platform, a lookup is performed to determine the appropriate routing instructions. Column 68, lines 33-36. There is no language in the cited passages that discloses transferring a request to access a shared device to the shared device. Neither is there any language in the cited passages that discloses transferring a request to access a shared device to the shared device if the shared device is not being accessed. Thus, Dugan does not disclose all of the limitations of claims 3, 10 and 17, and thus claims 3, 10 and 17 are not anticipated by Dugan. M.P.E.P. §2131.

7. Claims 4, 11 and 18 are not anticipated by Dugan.

Appellants respectfully assert that Dugan does not disclose "determining if said shared device is being accessed by said server blade" as recited in claim 4. The Examiner cites column 66, lines 15-67 and elements 88, 208, 158 and 172 of Figure 3 of Dugan as disclosing the above-cited claim limitation. Office Action (01/09/2005), page 4. Appellants respectfully traverse.

Dugan instead discloses that the Next Generation Intelligent Network (NGIN) provides the feature and functionality of accepting inbound calls, i.e., the capability to receive an indication of an inbound call and determine if the required resources and application to service the call are available. Column 66, lines 16-21. Dugan further discloses that the NGIN further provides the feature and functionality of incoming call screening with a list, i.e., allowing the subscriber to define a screening list to refuse or accept incoming calls. Column 66, lines 25-28. Dugan further discloses that the NGIN further provides the feature and functionality of queuing for incoming calls for any type of resource, i.e., when a resource (a termination, an operator, or an expensive hardware resource) is not available, the call which is requesting the connection to the resource is put into a queue. Column 66, lines 39-43. Dugan further discloses that the NGIN further provides the feature and functionality of call queuing, i.e., queuing and distributing callas to operator positions, pending availability of a resource. Column 66, lines 64-66. Dugan further discloses that element 158 of Figure 3 corresponds to a switch fabric. See Figure 3. Dugan further discloses that intelligent peripherals ("IP") (element 88) provide the ability to process and act on information contained within the actual call transmission path. Column 12, lines 18-20. Dugan further discloses that IP's (element 88) are generally in a separate Resource Complex, such as RCB (element 208), and are controlled by the ICPs (element 172) in a similar manner as RCA 206. Column 12, lines 20-22.

There is no language in the cited passage and in the description of the cited elements that discloses determining if the shared device is being accessed by a server blade. Neither is there any language in the cited passage and in the description of the

cited elements that discloses determining if the shared device is being accessed by a server blade if the shared device is being accessed. Thus, Dugan does not disclose all of the limitations of claims 4, 11 and 18, and thus claims 4, 11 and 18 are not anticipated by Dugan. M.P.E.P. §2131.

8. Claims 5, 12 and 19 are not anticipated by Dugan.

Appellants respectfully assert that Dugan does not disclose "wherein if said shared device is being accessed by said server blade then the method further comprises the steps of: connecting said shared device with said server blade" as recited in claim 5. The Examiner cites Figure 3 and column 66, lines 14-67 of Dugan as disclosing the above-cited claim limitation. Office Action (01/09/2005), page 4. Appellants respectfully traverse and assert that Dugan instead discloses that the Next Generation Intelligent Network (NGIN) provides the feature and functionality of accepting inbound calls, i.e., the capability to receive an indication of an inbound call and determine if the required resources and application to service the call are available. Column 66, lines 16-21. Dugan further discloses that the NGIN further provides the feature and functionality of incoming call screening with a list, i.e., allowing the subscriber to define a screening list to refuse or accept incoming calls. Column 66, lines 25-28. Dugan further discloses that the NGIN further provides the feature and functionality of queuing for incoming calls for any type of resource, i.e., when a resource (a termination, an operator, or an expensive hardware resource) is not available, the call which is requesting the connection to the resource is put into a queue. Column 66, lines 39-43. Dugan further discloses that the NGIN further provides the feature and functionality of call queuing, i.e., queuing and distributing callas to operator positions, pending availability of a resource. Column 66, lines 64-66. There is no language in the cited passage that discloses connecting a shared device with a server blade. Neither is there any language in the cited passage that discloses connecting a shared device with a server blade if the shared device is being accessed by the server blade. Thus, Dugan does not disclose all of the limitations of

claims 5, 12 and 19, and thus claims 5, 12 and 19 are not anticipated by Dugan. M.P.E.P. §2131.

Appellants further assert that Dugan does not disclose "transferring said request to access said shared device to said shared device" as recited in claim 5 and similarly in claims 12 and 19. The Examiner cites column 67, lines 5-10, 59-61 and column 68, lines 29-67 of Dugan as disclosing the above-cited claim limitation. Office Action (01/09/2005), page 4. Appellants respectfully traverse. As stated above, Dugan instead discloses that the system is able to concatenate the calling party ID with some other arbitrary characters for extra information or indication. Column 67, lines 4-6. Dugan further discloses that the NGIN provides the feature and functionality to analyze the incoming call parameters to determine the type of service processing required by the call. Column 67, lines 6-9. Dugan further discloses that the NGIN's call destination routing feature is a feature enabling the network to determine the destination to which a call should be terminated. Column 67, lines 59-61. Dugan further discloses that NGIN provides the feature and functionality of requesting routing instructions, i.e., when a call extension is done from the platform, a lookup is performed to determine the appropriate routing instructions. Column 68, lines 33-36. There is no language in the cited passages that discloses transferring the request to access the shared device to the shared device. Neither is there any language in the cited passages that discloses transferring the request to access the shared device to the shared device if the shared device is being accessed by the server blade. Thus, Dugan does not disclose all of the limitations of claims 5, 12 and 19, and thus claims 5, 12 and 19 are not anticipated by Dugan. M.P.E.P. §2131.

9. Claims 6, 13 and 20 are not anticipated by Dugan.

Appellants respectfully assert that Dugan does not disclose "receiving said response that said shared device is available" as recited in claim 6 and similarly in claims 13 and 20. The Examiner cites column 66, lines 18-25 and 48-50 of Dugan as

disclosing the above-cited claim limitation. Office Action (01/09/2005), page 5. Appellants respectfully traverse and assert that Dugan instead discloses that the NGIN provides the feature and functionality of accepting an inbound call, i.e., the capability to receive an indication of an inbound call and determine if the required resources and application to service the call are available. Column 66, lines 18-21. Dugan further discloses that when the queue becomes available the system pushes the call to the top of the queue out and direct the call to the available resources. Column 66, lines 48-50. There is no language in the cited passages that discloses receiving the response that the shared device is available. Thus, Dugan does not disclose all of the limitations of claims 6, 13 and 20, and thus claims 6, 13 and 20 are not anticipated by Dugan. M.P.E.P. §2131.

10. Claims 6, 13 and 21 are not anticipated by Dugan.

Appellants respectfully assert that Dugan does not disclose "connecting said shared device with said server blade" as recited in claim 6 and similarly in claims 13 and 21. The Examiner cites Figure 3 and column 66, lines 14-67 of Dugan as disclosing the above-cited claim limitation. Office Action (01/09/2006), page 5. Appellants respectfully traverse and assert that Dugan instead discloses that the Next Generation Intelligent Network (NGIN) provides the feature and functionality of accepting inbound calls, i.e., the capability to receive an indication of an inbound call and determine if the required resources and application to service the call are available. Column 66, lines 16-21. Dugan further discloses that the NGIN further provides the feature and functionality of incoming call screening with a list, i.e., allowing the subscriber to define a screening list to refuse or accept incoming calls. Column 66, lines 25-28. Dugan further discloses that the NGIN further provides the feature and functionality of queuing for incoming calls for any type of resource, i.e., when a resource (a termination, an operator, or an expensive hardware resource) is not available, the call which is requesting the connection to the resource is put into a queue. Column 66, lines 39-43. Dugan further discloses that the NGIN further

provides the feature and functionality of call queuing, i.e., queuing and distributing callas to operator positions, pending availability of a resource. Column 66, lines 64-66. There is no language in the cited passage that discloses connecting the shared device with the server blade. Thus, Dugan does not disclose all of the limitations of claims 6, 13 and 21, and thus claims 6, 13 and 21 are not anticipated by Dugan. M.P.E.P. §2131.

Appellants further assert that Dugan does not disclose "transferring said request to access said shared device to said shared device" as recited in claim 6 and similarly in claims 13 and 21. The Examiner cites column 67, lines 5-10, 59-61 and column 68, lines 29-67 of Dugan as disclosing the above-cited claim limitation. Office Action (01/09/2005), page 5. Appellants respectfully traverse. As stated above, Dugan instead discloses that the system is able to concatenate the calling party ID with some other arbitrary characters for extra information or indication. Column 67, lines 4-6. Dugan further discloses that the NGIN provides the feature and functionality to analyze the incoming call parameters to determine the type of service processing required by the call. Column 67, lines 6-9. Dugan further discloses that the NGIN's call destination routing feature is a feature enabling the network to determine the destination to which a call should be terminated. Column 67, lines 59-61. Dugan further discloses that NGIN provides the feature and functionality of requesting routing instructions, i.e., when a call extension is done from the platform, a lookup is performed to determine the appropriate routing instructions. Column 68, lines 33-36. There is no language in the cited passages that discloses transferring the request to access the shared device to the shared device. Thus, Dugan does not disclose all of the limitations of claims 6, 13 and 21, and thus claims 6, 13 and 21 are not anticipated by Dugan. M.P.E.P. §2131.

C. Claims 7, 14 and 22 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Dugan in view of Chang.

The Examiner has rejected claims 7, 14 and 22 under 35 U.S.C. §103(a) as

being unpatentable over Dugan in view of Chang. Office Action (12/15/2005), page 9. Appellants respectfully traverse these rejections for at least the reasons stated below.

1. The Examiner's motivation is insufficient to establish a *prima facie* case of obviousness in rejecting claims 7, 14 and 22.

Most if not all inventions arise from a combination of old elements. *See In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Obviousness is determined from the vantage point of a hypothetical person having ordinary skill in the art to which the patent pertains. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998). Therefore, an Examiner may often find every element of a claimed invention may often be found in the prior art. *Id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. *See Id.* In order to establish a *prima facie* case of obviousness, the Examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). That is, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some case, the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Whether the Examiner relies on an express or an implicit showing, the Examiner must provide particular findings related thereto. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The Examiner admits that Dugan does not teach a shared device that is a Universal Serial Bus device, as recited in claim 7 and similarly in claims 14 and 22. Office Action (01/09/2005), page 9. The Examiner modifies Dugan with Chang to include the above-cited claim limitation "because having USB is a less cumbersome and convenient way to transfer data (page 1, [0004])." Office Action (01/09/2005),

page 9. The Examiner's motivation is insufficient to establish a *prima facie* case of obviousness in rejecting claims 7, 14 and 22.

The Examiner's motivation ("because having USB is a less cumbersome and convenient way to transfer data (page 1, [0004])" does not provide reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Dugan to include the above-cited missing claim limitation from claims 7, 14 and 22. Accordingly, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 7, 14 and 22. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Dugan addresses the problem of using high-end workstations instead of proprietary hardware which is solved by performing intelligent call processing services for any type of call received at a resource complex or switching platform. Column 5, lines 61-63; column 5, line 66 – column 6, line 2. The Examiner has not provided any reasons as to why one skilled in the art would modify Dugan, which teaches performing intelligent call processing services for any type of call received at a resource complex or switching platform (column 5, line 66 – column 6, line 2), to implement a shared device that is a Universal Serial Bus device (Examiner admits that Dugan does not teach this limitation). The Examiner's motivation (because having a USB is a less cumbersome and a convenient way to transfer data) does not provide any reasons that the skilled artisan would modify Dugan, which teaches performing intelligent call processing services for any type of call received at a resource complex or switching platform, to implement a shared device that is a Universal Serial Bus device. The Examiner has not explained the rationale connection between having a USB that is a less cumbersome and a convenient way to transfer data and modifying Dugan, which teaches performing intelligent call processing services for any type of call received at a resource complex or switching platform, to implement a shared device that is a Universal Serial Bus device. Having a USB that is less cumbersome and a convenient way to transfer data is not related to

the problem that Dugan solves. Since the Examiner's motivation does not provide reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would modify Dugan to include the above-cited missing claim limitation from claims 7, 14 and 22, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 7, 14 and 22. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998).

Furthermore, the passage cited by the Examiner (paragraph [0004] of Chang) to support the Examiner's motivation does not support the Examiner's motivation at all. Instead, the passage cited by the Examiner (paragraph [0004] of Chang) to support his motivation teaches that the development of thin clients that are light, think and miniaturized electronic products provides superiority in reducing costs so as to have a competitive power in the thin client market. [0004]. The teaching of using thin clients in paragraph [0004] of Chang does not support using a Universal Serial Bus device because it is a less cumbersome and a convenient way to transfer data. In essence, the Examiner is relying upon his own subjective opinion which is insufficient to support a prima facie case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 7, 14 and 22. *Id.*

2. Claims 7, 14 and 22 are patentable over Dugan in view of Chang since claims 1, 8 and 15, respectively, are not anticipated by Dugan.

Claim 7 depends from claim 1 and hence is patentable over Dugan in view of Chang since claim 1 is not anticipated by Dugan for at least the reasons discussed above in Section B.1. Claim 14 depends from claim 8 and hence is patentable over Dugan in view of Chang since claim 8 is not anticipated by Dugan for at least the reasons discussed above in Section B.1. Claim 22 depends from claim 15 and hence is patentable over Dugan in view of Chang since claim 15 is not anticipated by Dugan for at least the reasons discussed above in Section B.1.

VIII. CONCLUSION

For the reasons noted above, the rejections of claims 1-22 are in error. Appellants respectfully request reversal of the rejections and allowance of claims 1-22.

Respectfully submitted,
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CLAIMS APPENDIX

1. A method for automatically switching remote shared devices in a dense server environment comprising the steps of:

receiving a request to access a shared device from a server blade; and

issuing a query as to whether said shared device is being accessed;

wherein if said shared device is not being accessed by said server blade then the method further comprises the steps of:

receiving a response to said query indicating that said shared device is not available; and

waiting to receive a response that said shared device is available.

2. The method as recited in claim 1 further comprising the step of:

determining if said shared device is being accessed.

3. The method as recited in claim 2, wherein if said shared device is not being accessed then the method further comprises the steps of:

connecting said shared device with said server blade; and

transferring said request to access said shared device to said shared device.

4. The method as recited in claim 2, wherein if said shared device is being accessed then the method further comprises the step of:

determining if said shared device is being accessed by said server blade.

5. The method as recited in claim 4, wherein if said shared device is being accessed by said server blade then the method further comprises the steps of:

connecting said shared device with said server blade; and

transferring said request to access said shared device to said shared device.

6. The method as recited in claim 1 further comprising the steps of:

receiving said response that said shared device is available;

connecting said shared device with said server blade; and

transferring said request to access said shared device to said shared device.

7. The method as recited in claim 1, wherein said shared device is a Universal Serial Bus device.

8. A computer program product embodied in a machine readable medium for automatically switching remote shared devices in a dense server environment comprising the programming steps of:

receiving a request to access a shared device from a server blade; and

issuing a query as to whether said shared device is being accessed;

wherein if said shared device is not being accessed by said server blade then the computer program product further comprises the programming steps of:

receiving a response to said query indicating that said shared device is not available; and

waiting to receive a response that said shared device is available.

9. The computer program product as recited in claim 8 further comprises the programming step of:

determining if said shared device is being accessed.

10. The method as recited in claim 9, wherein if said shared device is not being accessed then the computer program product further comprises the programming steps of:

connecting said shared device with said server blade; and

transferring said request to access said shared device to said shared device.

11. The computer program product as recited in claim 9, wherein if said shared

device is being accessed then the computer program product further comprises the programming step of:

determining if said shared device is being accessed by said server blade.

12. The computer program product as recited in claim 9, wherein if said shared device is being accessed by said server blade then the computer program product further comprises the programming steps of:

connecting said shared device with said server blade; and

transferring said request to access said shared device to said shared device.

13. The computer program product as recited in claim 8 further comprises the programming steps of:

receiving said response that said shared device is available;

connecting said shared device with said server blade; and

transferring said request to access said shared device to said shared device.

14. The computer program product as recited in claim 8, wherein said shared device is a Universal Serial Bus device.

15. A system, comprising:

one or more shared devices; and

a plurality of server blades coupled to said one or more shared devices via a service unit, wherein said service unit is configured to establish a connection between one of said one or more shared devices and one of said plurality of server blades requesting to access said one of said one or more shared devices;

wherein said requesting server blade comprises:

a processor; and

a memory unit coupled to said processor, wherein said memory unit is operable for storing a program, wherein the program is operable for performing the

following programming steps:

receiving a request to access said requested shared device from said requesting server blade; and

issuing a query to said service unit as to whether said requested shared device is being accessed;

wherein if said requested shared device is not being accessed by said requesting server blade then the program is further operable for performing the following programming steps:

receiving a response to said query indicating that said requested shared device is not available; and

waiting to receive a response that said requested shared device is available.

16. The system as recited in claim 15, wherein said service unit comprises:

a processor; and

a memory unit coupled to said processor, wherein said memory unit is operable for storing a computer program, wherein the computer program is operable for performing the following programming step:

determining if said requested shared device is being accessed.

17. The system as recited in claim 16, wherein if said requested shared device is not being accessed then the computer program of said service unit is further operable for performing the following programming step:

connecting said requested shared device with said requesting server blade;

wherein if said requested shared device is not being accessed then the program of said requesting server blade is further operable for performing the following programming step:

transferring said request to access said requested shared device to said requested shared device.

18. The system as recited in claim 16, wherein if said requested shared device is being accessed then the computer program of said service unit is further operable for performing the following programming step:

determining if said requested shared device is being accessed by said requesting server blade.

19. The system as recited in claim 18, wherein if said requested shared device is being accessed by said requesting server blade then the computer program of said service unit is further operable for performing the following programming step:

connecting said requested shared device with said requesting server blade;

wherein if said requested shared device is being accessed by said requesting server blade then the program of said requesting server blade is further operable for performing the following programming step:

transferring said request to access said requested shared device to said requested shared device.

20. The system as recited in claim 15, wherein the program of said requesting server blade is further operable for performing the following programming step:
receiving said response that said requested shared devices is available.

21. The system as recited in claim 20, wherein the computer program of said service unit is further operable for performing the following programming step:

connecting said requested shared device with said requesting server blade;

wherein the program of said requesting server blade is further operable for performing the following programming step:

transferring said request to access said requested shared device to said requested shard device.

22. The system as recited in claim 15, wherein said requested shared device is a Universal Serial Bus device.

EVIDENCE APPENDIX

No evidence was submitted pursuant to §§1.130, 1.131, or 1.132 of 37 C.F.R. or of any other evidence entered by the Examiner and relied upon by Appellants in the Appeal.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings to the current proceeding.